

Atlantic Richfield Company

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September 24, 2015

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Via Email

Greg Lovato
Deputy Administrator
Nevada Division of Environmental Protection
901 S. Stewart Street, Suite 4001
Carson City, Nevada 89701
glovato@ndep.nv.gov

RE: Yerington Mine Site
Response to NDEP's August 26, 2015 Letter and Proposed Settlement Framework

Dear Greg:

Atlantic Richfield Company ("Atlantic Richfield") is responding to NDEP's August 26, 2015 letter, which proposed a settlement framework for future remedial action at the Yerington Mine Site. NDEP requested a response by today's date indicating whether or not Atlantic Richfield will commit to negotiating on the specific funding and work obligations set forth in NDEP's settlement proposal outline. Given the relatively brief intervening period, Atlantic Richfield is not yet prepared to respond to the specific items in NDEP's outline or provide a point-by-point counter-proposal. We first need to perform a thorough cost-benefit analysis, consult with company management, and better understand the proposal. I can confirm, however, that Atlantic Richfield will commit to further discussions with NDEP in an effort to identify a workable site-wide remedial approach and an alternative to federal funding and continued EPA lead oversight. Atlantic Richfield is willing to extend these discussions through the end of 2015. However, if no viable alternative can be reached during that time, Atlantic Richfield will then fully support NPL listing and a path forward that relies, at least in part, on federal funding sources. Any settlement terms we discuss will be subject to final review and approval by Atlantic Richfield management.

There are several elements in NDEP's proposal that we agree would be important to a workable settlement. As stated in Atlantic Richfield's June 30, 2015 letter, we recognize the potential benefits of NDEP lead oversight, including more efficient decision making and greater site-use flexibility. We agree that the remedial action should initially focus on source control, on-site groundwater, and the Priority 1 operable units. We certainly support termination of the existing EPA orders. We are encouraged by NDEP's proposal to defer decisions pertaining to the off-site groundwater remedy, pending long-term monitoring of the effects of source area mitigation on plume dynamics. And we appreciate NDEP's acknowledgement that parties other than Atlantic Richfield will need to contribute to the funding and work obligations for certain operable units.

Atlantic Richfield cannot agree with certain other aspects of NDEP's proposal, however. For example, the absence of EPA covenants is a threshold issue for Atlantic Richfield. Under NDEP's proposed approach, Atlantic Richfield could be exposed to additional and overlapping regulatory requirements and enforcement action imposed by EPA. This would substantially undermine the benefits of an NDEP settlement. Without assurances that EPA acknowledges NDEP's lead oversight role, supports NDEP's remedial decisions, covenants not to sue Atlantic Richfield (subject to standard reservations), and would refrain from requiring further response actions except in connection with a periodic protectiveness review under CERCLA Section 121(c), 42 U.S.C. 9621(c), and after first consulting with NDEP, the proposed settlement would offer little protection and little benefit to Atlantic Richfield. Some of these concerns could be addressed through a memorandum of agreement between the agencies, but Atlantic Richfield would find it difficult to commit to an NDEP settlement without legally enforceable protections against inconsistent action by EPA. That being said, we are open to discussing limitations on the circumstances under which EPA could again become involved at the site, particularly with respect to off-site groundwater.

NDEP's proposed funding allocations for OU-8 and OU-1 are also not acceptable. Atlantic Richfield cannot agree to fund all OU-8 Fluid Management System ("FMS") costs for some indefinite period (it is highly uncertain when or if HLP draindown rates will consistently remain below 2 gpm), plus 90% of the OU-8 Phase I and II closure costs, 100% of the OU-1 on-site groundwater remedy construction and O&M costs, all of the remedy construction and O&M costs for the other operable units, 50% of NDEP's oversight costs for OU-8, and 100% of NDEP's oversight costs for the rest of the site. We realize that NDEP is trying to fashion an alternative to federal funding for the OU-8 remedy, and we appreciate NDEP's proposal to discontinue Atlantic Richfield's funding obligation for Post-Phase II OU-8 closure costs. But Atlantic Richfield should not bear such a large percentage of the financial burden for OU-8 and OU-1. Simply put, funding provided by NDEP and SPS will need to be enhanced, or other funding sources—including possible federal funding sources that may become available through NPL listing—will need to be identified.

As also stated in our June 30 letter, Atlantic Richfield would prefer not to commit to an open-ended funding percentage for future response costs. Instead, we would like to explore a fixed "cash-out" payment approach to settlement. If a cash-out settlement turns out to be an impractical solution for the entire site-wide remedial action, we would at least be looking to negotiate a fixed-price settlement payment for OU-8 and the other Priority I operable units.

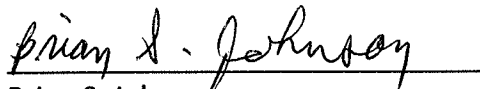
Atlantic Richfield understands that SPS prefers a strategy for OU-8 that would defer active remediation and capping while SPS continues to explore the feasibility of mining operations. SPS proposes to rely on enhanced evaporation to address short-term concerns with diminishing capacity in the FMS evaporation ponds and management of drain-down fluids. As we said in our June 30, 2015 letter, Atlantic Richfield supports a remedial action approach that preserves the potential future use and development of the site for mining. But Atlantic Richfield has incurred and is incurring substantial expenses for the annual operation and maintenance of the FMS, bird mitigation, and site security. We cannot agree to indefinitely put off a remedial action decision for OU-8 or other operable units at the site if the result is that Atlantic Richfield continues to perform this work and incur these costs in the meantime. If NDEP, EPA, and SPS are prepared to relieve Atlantic Richfield of this burden in the near term, Atlantic Richfield may be willing to consider an approach consistent with what SPS is proposing. We would first need to confirm that enhanced evaporation will not exacerbate groundwater impacts or otherwise complicate future remedial action at the site.

In short, for Atlantic Richfield to seriously consider a settlement of the type that NDEP is proposing, there will need to be greater certainty surrounding our future commitments and exposure and more substantial commitments from the other involved players. What would make a settlement potentially attractive is achieving finality as to Atlantic Richfield's obligations and liabilities, at least with respect to operable units likely to require extensive long-term O&M. We understand that such finality comes at a price, and we realize that even a cash-out settlement could be subject to limited reopeners based on newly discovered information or conditions. But establishing reasonable constraints on Atlantic Richfield's work and funding commitments, and ensuring that other sources of funding will be available to satisfy any funding shortfalls, would be key negotiating starting points for Atlantic Richfield.

As stated previously, Atlantic Richfield appreciates NDEP's attempts to push the Site remedial action process forward and accomplish a timely and workable solution for OU-8. Subject to the qualifications described in this letter, Atlantic Richfield looks forward to productive settlement negotiations with NDEP in the near future.

Greg Lovato, NDEP
September 24, 2015
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Sincerely yours,

A handwritten signature in dark ink, appearing to read "Brian S. Johnson", is written over a horizontal line.

Brian S. Johnson

Liability Business Manager, Atlantic Richfield Company

cc: Atlantic Richfield: Patricia Gallery, Jack Oman, Ron Halsey, James Lucari, Adam Cohen
NDEP: Dave Emme, Jeff Collins, Rebecca Bodnar, Jeryl Gardner, Jasmine Mehta
EPA: Enrique Manzanilla, Angeles Herrera, Harold Ball, Dave Seter, Dante Rodriguez,
Dustin Minor, Andrew Helmlinger
SPS: Tom Patton, Taurus Massey, Carla Consoli, Steven Dischler